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IHG MANAGEMENT (MARYLAND) LLC dba
HOTEL INDIGO LOS ANGELES
DOWNTOWN, a Maryland limited liability
company; IHG MANAGEMENT MARYLAND
LLC dba HOTEL INDIGO LOS ANGELES
DOWNTOWN, a Maryland limited liability
company.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KENDRA SLOAN as an aggrieved employee pursuant to the Private Attorneys General Act (“PAGA”),

Plaintiff,

V.

IHG MANAGEMENT (MARYLAND) LLC dba HOTEL INDIGO LOS ANGELES DOWNTOWN, a Maryland limited liability company; IHG MANAGEMENT MARYLAND LLC dba HOTEL INDIGO LOS ANGELES DOWNTOWN, a Maryland limited liability company, and DOES 1-10, inclusive

Defendants.

Case No.

**DEFENDANT IHG MANAGEMENT
(MARYLAND) LLC'S NOTICE OF
REMOVAL OF CIVIL ACTION TO
UNITED STATES DISTRICT
COURT UNDER 28 U.S.C. § 1441(b)
(DIVERSITY)**

(Removed from Los Angeles County
Superior Court, Case No. BC724262)

[Filed concurrently with Civil Cover Sheet, Corporate Disclosure, Notice of Interested Parties, Declaration of W. Clif Deaton and Declaration of Eric Hill]

Complaint filed: October 5, 2018

1 **TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT
2 OF CALIFORNIA, AND PLAINTIFF AND PLAINTIFF'S ATTORNEYS OF
RECORD:**

3 **PLEASE TAKE NOTICE** that IHG MANAGEMENT (MARYLAND) LLC,
4 (“Defendant”)¹, removes the above-referenced action from the Superior Court of the State
5 of California for the County of Los Angeles to the United States District Court for the
6 Central District of California, pursuant to 28 U.S.C. §§ 1332 and 1441(a) and (b), and
7 states that removal is proper for the following reasons:

8 **I. SUMMARY OF ACTION**

9 1. On October 5, 2018, Plaintiff Kendra Sloan (“Plaintiff”) filed a civil
10 complaint (the “Complaint”) in the Superior Court of the State of California for the
11 County of Los Angeles, entitled *Sloan v. IHG MANAGEMENT (MARYLAND) LLC dba*
12 *HOTEL INDIGO LOS ANGELES DOWNTOWN, a Maryland limited liability company;*
13 *IHG MANAGEMENT MARYLAND LLC dba HOTEL INDIGO LOS ANGELES*
14 *DOWNTOWN, a Maryland limited liability company, and DOES 1-10, inclusive*, Case
15 No. BC724262 (the “State Court Action”).

16 2. In the State Court Action, Plaintiff alleges a claim for civil penalties under
17 the California Private Attorney General Act of 2004 (“PAGA”) (California Labor Code
18 § 2698, *et seq.*).

19 3. On December 3, 2018, Defendant’s registered agent for service of process in
20 California received, via process server, the Summons; the Civil Case Cover Sheet and
21 Addendum; the Complaint; the Notice of Case Assignment; the Alternative Dispute
22 Resolution Information Packet; and related paperwork. A true and correct copy of the
23 Notice of Service of Process, showing a December 3, 2018 service date, is attached
24 hereto as **Exhibit A**. A true and correct copy of the Complaint, Civil Case Cover Sheet,
25 Summons, and all other papers received by Defendant in the State Court Action are
26 attached hereto collectively as **Exhibit B**.

27 ¹ In his Complaint, Plaintiff lists Defendant twice, as two separate entities - once with parentheses
28 around “Maryland” and once without the parentheses. The proper entity name is IHG Management
(Maryland) LLC.

1 4. On December 31, 2018, Defendant filed its Answer to Plaintiff's Unverified
 2 Complaint in the State Court Action. A true and correct copy of the Answer to Plaintiff's
 3 Unverified Complaint is attached hereto as **Exhibit C**.

4 5. Defendant has not filed or received any other pleadings or papers, other than
 5 the pleadings described as Exhibits B and C, in this action prior to this Notice of
 6 Removal. Defendant is informed and believes that the documents attached to this Notice
 7 of Removal as Exhibits B through C constitute the entirety of the court file in the State
 8 Court Action as of the date of filing this Notice of Removal. (Declaration of Eric Hill,
 9 filed in support of this Notice ("Hill Decl.") ¶3.)²

10 **II. TIMELINESS OF REMOVAL**

11 6. Plaintiff served the Complaint on Defendant on December 3, 2018. See
 12 Exh. A; Declaration of Clif Deaton, filed in support of this Notice, ("Deaton Decl.") ¶11,
 13 Exh. A.; (Hill Decl. ¶6). This Notice of Removal is timely as it is filed within thirty (30)
 14 days of the date the Complaint was served. 28 U.S.C. § 1446(b).

15 7. The time for filing a Notice of Removal does not begin to run until a party
 16 has been formally served with the Summons and Complaint under the applicable state
 17 law "setting forth the claim for relief upon which such action or proceeding is based" or,
 18 if the case stated by the initial pleading is not removable, after receipt of any "other paper
 19 from which it may be first ascertained that the case is one which is or has become
 20 removable." 28 U.S.C. §§ 1446; *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526
 21 U.S. 344, 347-48 (1999) (holding that "a named defendant's time to remove is triggered
 22 by simultaneous service of the summons and complaint"); *accord Kenny v. Wal-Mart*
 23 *Stores, Inc.*, 2018 WL 650998, at *4 (9th Cir. Feb. 1, 2018) ("We have also emphasized
 24 that 'a defendant does not have a duty of inquiry if the initial pleading or other document
 25 is 'indeterminate' with respect to removability.'").

27 2 In compliance with 28 U.S.C. section 1446(a), true and correct copies of all
 28 process, pleadings, and orders filed and/or served in the State Court Action are attached
 hereto as Exhibits A, B, and C.

1 8. The service of process which triggers the 30-day period to remove is
 2 governed by state law. *Osgood v. Main Street Marketing, LLC*, 2016 WL 6698952, at *2
 3 (S.D. Cal. Nov. 15, 2016) (“Although federal law requires the defendant to file a removal
 4 motion within thirty days of service, the term ‘service of process’ is defined by state
 5 law.” (citing *City of Clarksdale v. BellSouth Telecommunications, Inc.*, 428 F.3d 206,
 6 210 (5th Cir. 2005))).

7 9. This Notice of Removal is timely because it is filed within 30 days of
 8 personal service of the Summons and Complaint on December 3, 2018.³ 28 U.S.C. §
 9 1446(b); Cal. Civ. Proc. Code § 415.10 (“A summons may be served by personal delivery
 10 of a copy of the summons and of the complaint to the person to be served. Service of a
 11 summons in this manner is deemed complete at the time of such delivery”).

12 **III. REMOVAL ON THE BASIS OF DIVERSITY JURISDICTION**

13 10. Because this action is between citizens of different states and the amount in
 14 controversy exceeds the sum or value of seventy-five thousand dollars (\$75,000),
 15 exclusive of interest and costs, this Court has original jurisdiction over this action
 16 pursuant to 28 U.S.C. § 1332(a)(1). Accordingly, this action is removable to this Court
 17 pursuant to 28 U.S.C. § 1441(a).

18 **A. There Is Complete Diversity For Removal**

19 **1. Plaintiff Is A Citizen Of California**

20 11. To establish citizenship for diversity purposes, a natural person must be both
 21 (a) a citizen of the United States, and (b) a domiciliary of one particular state. *Kantor v.*
 22 *Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). Residence is *prima facie*
 23 evidence of domicile. *State Farm Mutual Auto Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th
 24 Cir. 1994). A person’s domicile is the place he or she resides with the intention to remain
 25 or to which he or she intends to return. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853,
 26 857 (9th Cir. 2001). In addition, for purposes of determining diversity jurisdiction,

27
 28 ³ Thirty days after December 3, 2018 is January 2, 2019.

1 various other types of objective facts can establish the plaintiff's state of domicile,
 2 including place of employment. *See Lew v. Moss*, 797 F.2d 747, 750 (9th Cir. 1986).

3 12. Plaintiff alleges that she is a resident and domiciliary of the State of
 4 California. (Compl. ¶ 6). Plaintiff's allegation that she is a resident of California is
 5 *prima facie* evidence that Plaintiff's domicile is in California, and, therefore, Plaintiff is a
 6 citizen of California. *State Farm Mutual Auto Ins.*, 19 F.3d at 520.

7 13. Plaintiff also provided her home address to Defendant during the course of
 8 her employment. Defendant's review of Plaintiff's personnel file reveals that Plaintiff's
 9 address, that she provided to Defendant, was in California. (Deaton Decl. ¶8.)

10 14. Furthermore, Plaintiff alleges that Defendant does business in California,
 11 and that Plaintiff and the purported "aggrieved employees" she seeks to represent were
 12 employed by Defendant in California.⁴ (Compl. ¶1, 7); *see also* Compl. ¶6 (Plaintiff was
 13 employed by Defendant in the State of California).)

14 15. As set forth below, Defendant is a citizen of the States of Maryland,
 15 Delaware, and Georgia, but it is not a citizen of the State of California. Since Plaintiff is
 16 not a citizen of the States of Maryland, Delaware or Georgia, and rather is and has been a
 17 citizen of California, this Court has original jurisdiction over this action pursuant to 28
 18 U.S.C. § 1332(a)(1) and the action is removable to this Court pursuant to 28 U.S.C. §
 19 1441(a).

20 **2. Defendant Is Not A Citizen Of California**

21 16. For purposes of diversity jurisdiction, a corporation is deemed a citizen of its
 22 place of incorporation and the location of its principal place of business. 28 U.S.C.
 23 § 1332(c)(1) ("a corporation shall be deemed to be a citizen of every State ... by which it
 24 has been incorporated and of the State ... where it has its principal place of business");
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27 4 Plaintiff asserts her claims on behalf of herself as well as "current and former
 28 employees who worked ... in California as non-exempt hourly paid employees ..." (Compl. ¶21.)

1 *Bank of California Nat. Ass'n v. Twin Harbors Lumber Co.*, 465 F.2d 489, 492 (9th Cir.
 2 1972) (corporations have “dual citizenship”).

3 17. The United States Supreme Court has held that a corporate entity’s
 4 “principal place of business” for determining its citizenship is its “nerve center.” *The*
 5 *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010). In determining a corporation’s “nerve
 6 center,” courts are to examine where the “corporation’s officers direct, control, and
 7 coordinate the corporation’s activities,” and where the corporation maintains its
 8 headquarters. *Id.* at 92. Other relevant factors include where corporate executives
 9 maintain their offices, where corporate policies and procedures are made, and where
 10 primary corporate functions are based. *See Ho v. Ikon Office Solutions, Inc.*, 143 F.
 11 Supp. 2d 1163, 1168 (N.D. Cal. 2001) (nerve center found to be location where
 12 corporations headquarters were located, where the corporate officers worked, and from
 13 where the corporate policies and procedures arose). Thus, the “nerve center” is “where
 14 the majority of its executive and administrative functions are performed.” *Tosco v.*
 15 *Communities for a Better Environment*, 236 F.3d 495, 500 (9th Cir. 2001) (citation
 16 omitted).

17 18. IHGM is a Maryland Limited Liability Company. IHGM is, and has been at
 18 all times since this action commenced, organized under the laws of the State of Maryland.
 19 (Deaton Decl. ¶9)

20 19. The majority of IHGM’s executive and administrative functions, including
 21 corporate finance and accounting, are performed in Georgia, where its corporate
 22 headquarters are located. (Deaton Decl. ¶10) IHGM’s executive operations are managed
 23 from its Georgia headquarters, where the majority of its corporate officers maintain
 24 offices. (Deaton Decl. ¶10) IHGM’s sole member is InterContinental Hotels Group
 25 Resources, Inc., a Delaware corporation with its principal place of business in Atlanta,
 26 Georgia. (Deaton Decl. ¶10) InterContinental Hotels Group Resources, Inc.’s corporate
 27 officers maintain offices in Georgia, and a majority of its corporate officers and directors
 28 work from its headquarters in Georgia.

1 20. Accordingly, Defendant has been at all relevant times a citizen of the States
 2 of Maryland, Delaware, and Georgia. *See Hertz Corp.*, 559 U.S. at 92. Defendant is not
 3 now, and was not at the time of the filing of the Complaint, a citizen of the State of
 4 California.

5 **3. Doe Defendants May Be Disregarded**

6 21. Pursuant to 28 U.S.C. Section 1441(b), the residence of fictitious and
 7 unknown defendants should be disregarded for purposes of establishing removal
 8 jurisdiction under 28 U.S.C. section 1332. *Fristoe v. Reynolds Metals, Co.*, 615 F.2d
 9 1209, 1213 (9th Cir. 1980) (unnamed defendants are not required to join in a removal
 10 petition). Thus, the existence of Doe defendants, 1–10, does not deprive this Court of
 11 jurisdiction.

12 **B. The Amount In Controversy Exceeds \$75,000**

13 22. While Defendant denies any liability as to Plaintiff's claims, the amount in
 14 controversy requirement is satisfied because it is “more likely than not” that the amount
 15 in controversy exceeds the jurisdictional minimum. *Sanchez v. Monumental Life Ins.*
 16 *Co.*, 102 F.3d 398, 404 (9th Cir. 1996). Here, the damages requested by Plaintiff “more
 17 likely than not” exceed \$75,000, exclusive of interest and costs, as required by 28 U.S.C.
 18 § 1332(a).

19 23. As the Supreme Court recently made clear, “a defendant's notice of removal
 20 need only include a plausible allegation that the amount in controversy exceeds the
 21 jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct.
 22 547, 553-54 (2014) (“[W]hen a defendant seeks federal-court adjudication, the
 23 defendant's amount-in-controversy allegation should be accepted when not contested by
 24 the plaintiff or questioned by the court.”); *see also Valdez v Allstate Ins. Co.*, 372 F.3d
 25 1115, 1117 (9th Cir. 2004) (“the parties need not predict the trier of fact's eventual award
 26 with one hundred percent accuracy”). Defendant is not obligated to “research, state, and
 27 prove the plaintiff's claims for damages.” *Behrazfar v. Unisys Corp.*, 687 F. Supp. 2d
 28 999, 1004 (C.D. Cal. 2009) (quoting *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d

1 1199, 1204-05 (E.D. Cal. 2008)). Thus, Defendant bases the amount in controversy
 2 calculations on a plausible reading of the allegations contained in Plaintiff's Complaint.⁵

3 24. In determining the amount in controversy, the Court must consider the
 4 general damages, special damages, punitive damages, and attorneys' fees that the
 5 Complaint has put "in controversy." *Bank of Calif. Nat'l Ass'n v. Twin Harbors Lumber*
 6 Co., 465 F.2d 489, 491 (9th Cir. 1972); *see also Simmons v. PCR Tech.*, 209 F. Supp. 2d
 7 1029, 1031 (N.D. Cal. 2002) ("The jurisdictional minimum may be satisfied by claims
 8 for special and general damages, attorneys' fees and punitive damages."); *Brady v.*
 9 *Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d 1004, 1009 (N.D. Cal. 2002) (explaining
 10 penalties are properly included in calculating amount in controversy).

11 **C. The PAGA Penalties Sought By Plaintiff Exceeds \$75,000**

12 25. Plaintiff seeks to recover civil penalties under PAGA for Defendant's
 13 alleged violations of the following California Labor Code sections and regulations:

- 14 • Labor Code sections 201-203 (*see, e.g.*, Compl. ¶¶88-90);
- 15 • Labor Code section 204 (*see, e.g.*, Compl. ¶¶83-87);
- 16 • Labor Code section 226(a) (*see, e.g.*, Compl. ¶¶78-82);
- 17 • Labor Code sections 226.7, 512, and the applicable IWC Wage Order (*see,*
e.g., Compl. ¶¶61-71, 72-77);
- 18 • Labor Code sections 510 and 1198 (*see, e.g.*, Compl. ¶¶47-56);
- 19 • Labor Code section 1174 (d) (*see, e.g.*, Compl. ¶¶78-82);
- 20 • Labor Code section 1182.12 (*see, e.g.*, Compl. ¶¶57-60);
- 21 • Labor Code section 1197 and 1197.1 (*see, e.g.*, Compl. ¶¶57-60);
- 22 • Labor Code sections 1198 (*see, e.g.*, Compl. ¶¶91-95);
- 23 • Labor Code section 2802 (*see, e.g.*, Compl. ¶¶96-98)⁶; and

24 ⁵ Should Plaintiff or the Court challenge Defendant's amount in controversy
 25 allegations contained in this Notice of Removal, Defendant requests that the Court allow
 26 Defendant to present evidence to support its calculations. *See Dart Cherokee Basin*
Operating, 125 S. Ct. at 554 ("Evidence establishing the amount is required by
 27 § 1446(c)(2)(B) only when the plaintiff contests, or the court questions, the defendant's
 allegation.").

28 ⁶ Alternatively, Plaintiff seeks penalties under Labor Code section 558 for the
 foregoing alleged Labor Code violations. (Compl. ¶¶ 40.)

1 • California Code of Regulations, Title 8, Section 11050(4)(c) (*see, e.g.*,
 2 Compl. ¶100).

3 26. Pursuant to PAGA, 75% of the penalties recovered are distributed to the
 4 State Labor and Workforce Development Agency (“LWDA”) with the remaining 25%
 5 awarded to the purported “aggrieved employees.” Lab. Code § 2699(i).

6 27. PAGA claims are subject to a one-year statute of limitations. Cal. Civ. Proc.
 7 Code § 340; *Thomas v. Home Depot USA Inc.*, 527 F. Supp. 2d 1003, 1007 (N.D. Cal.
 8 2007). Plaintiff filed the Complaint on October 5, 2018. Plaintiff seeks to recover
 9 PAGA penalties for violations occurring “during the liability period” from “one year
 10 prior” to the date Plaintiff sent Notice to the LWDA (July 31, 2018), which equates to the
 11 period of July 31, 2017 to present. (Compl. ¶1, 37.)

12 **1. The Amount In Controversy For Removal Purposes Is Properly
 13 Calculated By Considering The 75% Share Of Penalties Of The
 14 Real Party In Interest, The State Of California**

15 28. In PAGA actions like this one, the State of California, not the named
 16 plaintiff, is the real party in interest. *See Sakkab v. Luxottica N. Am., Inc.*, 803 F.3d 425,
 17 435 (9th Cir. 2015) (“[a]n employee bringing a PAGA action does so ‘as the proxy or
 18 agent of the state’s labor law enforcement agencies,’ . . . *the real parties in interest*”)
 19 (emphasis added); *Archila v. KFC U.S. Props., Inc.*, 420 F. App’x 667, 669 (9th Cir.
 20 2011) (“California [is] a real party in interest to a PAGA action”). Indeed, a PAGA
 21 action seeks penalties for violations of the Labor Code, that prior to PAGA’s enactment,
 22 were recoverable by the LWDA only. In such actions, the State—as the enforcer of the
 23 Labor Code—retained the penalties. PAGA altered this *status quo* by allowing the State
 24 to deputize individual plaintiffs to bring suit on behalf of the State, if the individuals
 25 provided notice of the alleged Labor Code violations to the LWDA and the State declined
 26 to prosecute them. *See* Cal. Lab. Code § 2699.3(b)(2)(B).

27 29. The fact that PAGA incentivized private citizens to act *on behalf* of the State
 28 of California by providing them with a 25% cut of the State’s penalties does not change
 29 the well-established fact that the State of California is the real party in interest. *See* Cal.

1 Lab. Code § 2699(i). The State retains the lion’s share of penalties, a 75% cut. *See id.*
2 This makes sense because the State as the real party in interest still holds title to any
3 PAGA claim, unlike others (i.e., Plaintiff here), who may simply seek to benefit by the
4 litigation.⁷ *United States ex rel. Spicer v. Westbrook*, 751 F.3d 354, 362 (5th Cir. 2014)
5 (“The real party in interest is the person holding the substantive right sought to be
6 enforced”); *U-Haul Int’l, Inc. v. Jartran, Inc.*, 793 F.2d 1034, 1038 (9th Cir. 1986) (the
7 real party in interest is the party entitled to the damages at issue in a lawsuit).

8 30. In a PAGA case, the amount recoverable by the “real party in interest”—the
9 party holding actual title and all substantive rights to the claim—represents the amount in
10 controversy for removal. *See Sakkab*, 803 F.3d at 436 (a PAGA action is simply “a
11 statutory action for penalties brought as a proxy for the state, *rather than* a procedure for
12 resolving the claims of other employees”) (emphasis added). Thus, the amount in
13 controversy on a PAGA claim, for removal purposes, is properly calculated by
14 considering the 75% share of the penalties attached to the real party in interest, the State
15 of California.

16 31. As set forth in Plaintiff’s Complaint, Plaintiff seeks penalties under various
17 provisions of the Labor Code for the applicable limitations period (Compl. ¶39).
18 Specifically, Plaintiff alleges various statutory violations and seeks recovery for penalties
19 authorized by PAGA.

20 32. Plaintiff specifically seeks “civil penalties and any other available relief” for
21 violations committed “at any time between one year before Plaintiff’s submission of the
22 LWDA Notice in advice of Plaintiff’s filing of this complaint (in addition to all days the
23 period was stayed or tolled) until judgment.” (Compl. ¶ 1) Thus, according to the
24 Complaint, Defendant’s alleged Labor Code violations were repeated and ongoing
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27 7 It should be noted that the State of California, “as the real party in interest, is not a
28 ‘citizen’ for diversity purposes.” *Urbino v. Orkin Servs. Of Cal., Inc.*, 726 F.3d 1118,
1123 (9th Cir. 2013).

1 throughout the applicable limitations period. Plaintiff submitted her LWDA notice on
2 July 31, 2018 (Compl. ¶ 37), and therefore seeks penalties from July 31, 2017 to present.

3 33. Further, Plaintiff alleges ongoing Labor Code violations based on the
4 allegation that Plaintiff and those she seeks to represent were not paid all wages owed
5 twice per month. (See, e.g., Compl. ¶86 (“At all relevant times herein, Defendants failed
6 to pay Plaintiff and Aggrieved Employees all wages due including, but not limited to,
7 overtime wages, minimum wages, meal and rest period premium wages, and/or split shift
8 premiums, specified by Labor Code section 204.”). Defendant’s employees were paid on
9 a bi-weekly basis, meaning there are 26 pay periods per year. (Deaton Decl. ¶6) As such,
10 Plaintiff alleges 36 separate penalties — for each provision of the Labor Code for which
11 penalties are sought.⁸ The total of these penalties for each individual employed during
12 the relevant period, based on Plaintiff’s own allegations, far exceeds the \$75,000
13 requirement for diversity jurisdiction:

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⁸ The amount in controversy is “assessed as of ‘the time of removal.’” *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 417 (9th Cir. 2018). Plaintiff alleges a pattern or practice that violated the Labor Code “at all times relevant.” (Compl. ¶¶52, 65, 69, 75, 86, 89, 97.) Thus, for purposes of calculation of the amount in controversy, Defendant counts the initial pay period during the applicable limitations period as an initial violation. Plaintiff seeks to recover PAGA penalties for violations occurring “during the liability period” from “one year prior” to the date Plaintiff sent Notice to the LWDA, which equates to the period of July 31, 2017 to December 31, 2018 (i.e., the time of removal), or approximately 36 bi-monthly pay periods. (Compl. ¶12.)

1 Complaint 2 Citation	3 Labor Code 4 Provision(s) For 5 Which Penalty Sought	6 Penalty for Each 7 Violation	8 Total
9 Complaint ¶¶47- 10 56, 57-60, 91-95 11 (Failure to Pay 12 Overtime and 13 Minimum Wages)	14 Labor Code § 510 15 ("Day's work"; Hours") 16 Labor Code § 1198 17 (maximum hours) 18 Labor Code § 1197 19 (requirement that minimum wage be paid) Labor Code § 1197.1 Labor Code § 1194 Labor Code § 1182.12 Cal. Code Reg., Title 8, § 11050(4)(c)	10 \$100 for initial 11 violation and \$200 12 for each subsequent ⁹ 13 (1 x \$100) + (35 x \$200) 14 15 16 17 18 19 \$100 for initial violation and \$250 for each subsequent (1 x \$100) + (35 x \$250) \$100 per violation and \$200 for each subsequent (1 x \$100) + (35 x \$200) \$100 per violation and \$200 for each subsequent (1 x \$100) + (35 x \$200)	11 \$7,100 \$7,100 \$8,850 \$8,850 \$7,100 \$7,100 \$7,100 \$7,100

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21
22⁹ While Defendant denies that these penalties are recoverable, PAGA does provide
23 for penalties consisting of \$100 for an "initial violation" in a pay period and \$200 per pay
24 period for each "subsequent violation," unless the code that is alleged to have been
25 violated specifically provides for its own civil penalty. See Cal. Labor Code §
26 2699(f)(2). Plaintiff alleges she is entitled to a \$100 penalty for each initial violation and
27 \$200 for each subsequent violation. (Compl. ¶¶56, 66, 86, 99, 111, 129, 139, and 149.) To
28 the extent a different formula is used to calculate the amount in controversy herein, that
formula is derived from the underlying code that is alleged to have been violated. These
numbers are used only for purposes of estimating the potential PAGA penalty exposure,
and for removal purposes only. This is not an admission by Defendant as to the scope of
liability.

Complaint Citation	Labor Code Provision(s) For Which Penalty Sought	Penalty for Each Violation	Total
Complaint ¶¶62-71 (Failure to Provide Meal Periods)	Labor Code § 226.7 (provision of meal, rest, or recovery period)	\$100 for initial violation and \$200 for each subsequent (1 x \$100) + (35 x \$200)	\$7,100
	Labor Code § 512(e) (meal periods)		\$7,100
	IWC Wage Order No. 5-2001 (meal periods)	\$50 for initial violation and \$100 for each subsequent (1 x \$50) + (35 x \$100)	\$3,550
Complaint ¶¶72-77 (Failure to Provide Rest Periods)	Labor Code § 226.7 (rest periods)	\$100 for initial violation and \$200 for each subsequent (1 x \$100) + (35 x \$200)	\$7,100
	IWC Wage Order No. 5-2001 (rest periods)	\$50 for initial violation and \$100 for each subsequent (1 x \$50) + (35 x \$100)	\$3,550
Complaint ¶¶72-77 (Failure to Provide Itemized Wage Statements)	Labor Code § 226 (wage statements)	\$50 for initial violation and \$100 for each subsequent (1 x \$50) + (35 x \$100)	\$3,550
Complaint ¶¶83-87 (Failure to Pay Wages During Employment)	Labor Code § 204 and 210 (semi-monthly payment)	\$100 for initial violation and \$200 for each subsequent. Labor Code § 210 (1 x \$100) + (35 x \$200)	\$7,100
Complaint ¶¶96-98	Labor Code § 2802 (expense reimbursement)	\$100 for initial violation and \$200 for each subsequent (1 x \$100) + (35 x \$200)	\$7,100
			\$99,350

1 34. In addition to the foregoing claims, Plaintiff seeks penalties for other alleged
 2 Labor Code violations that would have occurred one or more times during the course of
 3 each aggrieved employee's employment:

Complaint Citation	Labor Code Provision(s) For Which Penalty Sought	Penalty for Each Violation	Total
Complaint ¶88-90 (Failure to provide wages at termination)	Labor Code § 201 (payment at discharge)	\$100 for initial violation and \$200 for each subsequent	At least \$100
	Labor Code § 202 (payment of quitting employee)		At least \$100
	Labor Code § 203 (waiting time penalties)		At least \$100
Compl. ¶80 (Failure to Maintain Records)	Labor Code § 1174(d) and 1174.5 (maintenance of payroll records)	\$500 for initial violation	At least \$500
Total Grand Total per aggrieved employee			At least \$800
			\$99,350.00
			\$800.00
			\$100,150.00

20 35. Moreover, Plaintiff asserts claims on behalf of other "current and former
 21 employees who worked for" Defendants "in California as non-exempt, hourly-paid
 22 employees." (Compl. ¶1; *see also id.* ¶53.) Defendant currently employs or has
 23 employed approximately 1,656 such individuals in the State of California in the single
 24 year preceding Plaintiff's LWDA Notice, from July 31, 2017 through November 15,
 25 2018. (Deaton Decl. ¶4.)

26 36. As noted above, Plaintiff has alleged at least 17 separate violations of the
 27 Labor Code and regulations in support of his PAGA claim. Even based on 2 underlying
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1 violations for each of the 1,656 employees, at the initial penalty of \$100, Plaintiff's
2 allegations puts at least roughly \$331,200 in controversy. (1,656 X 2 x \$100). The 75%
3 share of these alleged penalties in controversy as to the real party in interest, the State of
4 California, is therefore at least **\$248,400**.

5 **2. In the Alternative, The Amount In Controversy For Each**
6 **“Aggrieved” Employee Also Exceeds \$75,000**

7 37. Based on the above, the \$75,000 amount in controversy requirement is
8 clearly met. Moreover, in the alternative, this threshold is also met by considering the
9 amount in controversy for each aggrieved employee. Defendant understands that *Urbino*
10 *v. Orkin Services of California, Inc.*, 726 F.3d 1118, 1119 (9th Cir. 2013), foreclosed the
11 aggregation of the value of *multiple* employees' claims in a PAGA case, to meet the
12 amount in controversy requirement for federal diversity jurisdiction.¹⁰ However, *Urbino*
13 neither considered nor addressed the proper calculation of the amount in controversy for
14 a PAGA claim *without* aggregating the value of multiple employees' claims.

15 38. “Aggregation has been permitted only (1) in cases in which a single plaintiff
16 seeks to aggregate two or more of his own claims against a single defendant, and (2) in
17 cases in which two or more plaintiffs unite to enforce a single title or right in which they
18 have a common and undivided interest.” *Snyder v. Harris*, 394 U.S. 332, 335 (1969).
19 *Urbino* expressly considered only item (2) — aggregating the claims of multiple
20 plaintiffs. *Urbino* did not expressly consider item (1), in the context of a theory that the
21 single named PAGA plaintiff is aggregating her *own* representative claims against a

22 ¹⁰ In other words, the Ninth Circuit has held that “the penalties payable to other
23 members of the potential class of employees may not be aggregated to satisfy the
24 amount-in-controversy requirement for jurisdiction under 28 U.S.C. § 1332(a).” *Patel v. Dairy Farmers of Am., Inc.*, 986 F. Supp. 2d 1151, 1153-54 (C.D. Cal. 2013) (explaining
25 *Urbino*'s holding that the penalties going to aggrieved employees may not be aggregated
26 to satisfy the amount-in-controversy requirement for jurisdiction under 28 U.S.C. §
27 1332(a)) (citing *Urbino*, 726 F.3d at 1122-23); see also *Patel v. Nike Retail Servs., Inc.*,
28 58 F. Supp. 3d 1032, 1044-45 (N.D. Cal. 2014) (explaining that *Urbino* did not address
the aggregation of LWDA and personal penalties but only aggregation of penalties owed
to the entire group of “aggrieved employees”)

1 single defendant in addition to the share that would be received by the LWDA. Because
2 the issue in *Urbino* was the propriety of aggregating recoveries going to multiple
3 plaintiffs or multiple aggrieved employees in calculating the amount in controversy, it did
4 not squarely consider this theory.¹¹ *See Pagel*, 986 F. Supp. 2d at 1156 (explaining “[t]he
5 Ninth Circuit’s *Urbino* decision considered whether PAGA claims fell under the second
6 exception”).

7 39. Thus, excluding the distinct portion of the PAGA penalties that go to the
8 aggregate of individual employees, as *Urbino* did, leaves for consideration the money
9 that goes to the LWDA. Because that money is “part of the ‘object of the suit,’” the
10 Complaint places the LWDA proceeds in controversy. *Pagel*, 986 F. Supp. 2d at 1160
11 (fact that certain monies go to the LWDA, not to individual aggrieved employees, “does
12 not remove those sums from the amount in controversy calculation. They are part of ‘the
13 object of the suit,’ and from [defendant’s] viewpoint are part of the total damages it will
14 pay if the suit succeeds”) (quoting *Packard v. Banton*, 264 U.S. 140, 142 (1924)); *see also Patel*, 58 F. Supp. 3d at 1047-48 (“Here, Defendant Nike owes an obligation to
16 Plaintiff Patel and LWDA to obey the state Labor Code, but it owes that obligation to
17 both entities as a plurality. . . . The adjudication of Patel’s claims will implicate both
18 Patel’s rights and the LWDA’s. Once the LWDA has been informed of the potential
19 Labor Code violations and declined to prosecute them, Patel’s claims are not ‘cognizable’
20 as different claims that [sic] the LWDA’s.”).

21
22 ¹¹ Subsequent California Supreme Court and Ninth Circuit rulings have also cast doubt on
23 *Urbino*’s continuing validity. *Sakkab*, which was decided two years after *Urbino*, is an
24 example. Not only does *Sakkab* suggest that the penalties recoverable by the State as the
25 real party in interest comprise the amount in controversy that should be considered for
26 removal purposes (as discussed above), but it challenges *Urbino*’s premise that the total
27 penalties recoverable in a PAGA action are the aggregate of penalties from individual
28 employees’ claims. Because the parties in *Urbino* argued for removal based solely by
aggregating claims, the *Urbino* court had assumed that the rights at issue in a PAGA
claim are held individually. *Sakkab* makes clear that PAGA actions “do not aggregate
individual claims,” but instead implicate the claims of the real party in interest, the State
of California. *Sakkab*, 803 F.3d at 437 (emphasis added).

1 40. Accordingly, the amount-in-controversy requirement is met if the penalties
2 owed by a defendant for the Labor Code violations pertaining to a single individual
3 amounts to over \$75,000, regardless of the end recipient of any specific portion of those
4 funds. *See Patel*, 58 F. Supp. 3d at 1048 (concluding that “the entire amount of PAGA
5 penalties attributable to [the plaintiff’s] claims count toward the amount in controversy”).

6 41. While Defendant denies that Plaintiff is entitled to any relief in this action
7 and believes her allegations are meritless, the amount in controversy is dictated by
8 Plaintiff’s claims in the Complaint, not the merits. As set forth above, the amount in
9 controversy for each individual whom Plaintiff seeks to represent who was employed
10 since July 31, 2017, based on Plaintiff’s own allegations in the Complaint, is roughly
11 \$100,150, which far exceeds \$75,000. The real party in interest’s 75% share of this
12 amount also exceeds \$75,000.

13 42. To the extent any Plaintiff does not independently meet the amount-in-
14 controversy requirement, this Court may exercise supplemental jurisdiction pursuant to
15 28 U.S.C. § 1337. Section 1337(a) allows supplemental jurisdiction when those claims
16 without original jurisdiction “are so related to claims in the action within such original
17 jurisdiction that they form part of the same case or controversy.” The Supreme Court has
18 made clear that although complete diversity is necessary for supplemental jurisdiction,
19 only one plaintiff must meet the amount-in-controversy requirement. *Exxon Mobil Corp.*
20 *v. Allapattah Servs., Inc.*, 545 U.S. 546, 558 (2005) (“The single question before us,
21 therefore, is whether a diversity case in which the claims of some plaintiffs satisfy the
22 amount-in-controversy requirement, but the claims of other plaintiffs do not, presents a
23 ‘civil action of which the district courts have original jurisdiction’ [within the meaning of
24 28 U.S.C. § 1337(a)]. . . . We now conclude the answer must be yes.”); *Carey v. S.J.*
25 *Louis Const. Inc.*, No. 2:10-CV-2017-GEB-GGH, 2010 WL 3853348, at *4 (E.D. Cal.
26 Sept. 30, 2010) (“In an action involving multiple plaintiffs, a federal court may exercise
27 supplemental jurisdiction over a co-plaintiff’s claims that fail to meet the jurisdictional
28 amount in controversy if (1) at least one plaintiff satisfies the amount in controversy, (2)

1 the other elements of diversity jurisdiction are satisfied, and (3) the plaintiff's claims are
2 part of the same 'case or controversy.'"); *Campbell v. Bridgestone/Firestone, Inc.*, No.
3 CIVF051499FVSDLB, 2006 WL 707291, at *2 (E.D. Cal. Mar. 17, 2006) ("In cases
4 involving multiple plaintiffs, the removing defendant need only show that one of the
5 plaintiffs has an amount in controversy greater than \$75,000.00").

6 43. Further, in this case, Plaintiff alleges that Defendant engaged in a pattern or
7 practice of Labor Code violations throughout the entire applicable time period which
8 forms the basis for all of her claims. (See Compl. ¶¶53-55, 58, 65-71, 75-77, 79-80, 86,
9 89-90, 97-98). Accordingly, all of Plaintiff's claims form part of the same case or
10 controversy because they are based on the same "nucleus of operative facts." *See Kohler*
11 *v. Inter Tel Techs.*, 244 F.3d 1167, 1170 (9th Cir. 2001) (supplemental jurisdiction proper
12 because claims stemmed from same factual circumstances); *Carey*, 2010 WL 3853348 at
13 **4-5 (denying motion to remand because one plaintiff demonstrated the required
14 amount in controversy and the others alleged the same Labor Code violations such that
15 their allegations were part of the same case or controversy).

16 44. Thus, the Court has proper jurisdiction over this case pursuant to 28 U.S.C.
17 §§ 1332 and 1441(a) and (b).

18 **3. Attorneys' Fees And Costs Will Exceed \$75,000**

19 45. Plaintiff also seeks attorneys' fees. (Compl. ¶103.) Defendant anticipates
20 depositions being taken in this case, and that ultimately, Defendant will file a Motion for
21 Summary Judgment. Based on defense counsel's experience, attorneys' fees in
22 California wage-and-hour PAGA cases often exceed \$75,000. Moreover, given the
23 number of represented employees in this action, a trial in this matter is likely to be
24 lengthy. *See, e.g., Medlock v. Host Int'l, Inc.*, 2013 WL 2278095, at *8 (E.D. Cal. May
25 22, 2013) (explaining the court "will not tolerate witnesses being presented without the
26 presenting party having certainty as to what the testimony will reveal" and not requiring
27 depositions but interviews of at least 87 employees in PAGA action). In this regard, it is
28 more likely than not that the attorneys' fees will exceed \$75,000 through discovery and a

1 summary judgment hearing, and the fees would certainly exceed \$75,000 if the case
2 proceeds to trial.¹² (Hill Decl. ¶5.)

3 **4. Plaintiff's Statement Regarding The Amount Of Damages
4 Recoverable Does Not Affect The Amount In Controversy At The
Time Of Removal**

5 46. Plaintiff statement in her Complaint that her “share of civil penalties sought
6 in this action does not exceed \$75,000,” (Compl. ¶1) does not actually limit the amount
7 in controversy in this case, for two reasons.

8 47. First, “a party’s affirmative stipulation cannot establish or deprive the court
9 of subject matter jurisdiction[.]” *Schiller v. David’s Bridal, Inc.*, No. 1:10-cv-00616
10 AWI SKO, 2010 WL 2793650, at *4 (E.D. Cal. July 14, 2010); *accord Conrad Assocs. v.*
11 *Hartford Acc. & Indem. Co.*, 994 F. Supp. 1196, 1199 (N.D. Cal. 1988) (“a defect in
12 subject matter jurisdiction cannot be stipulated to or waived” and plaintiff’s refusal to
13 stipulate regarding the potential amount of damages “would serve no effect in
14 determining the actual amount in controversy at the time of removal.”).

15 48. Second, Plaintiff’s stipulation does not limit the amount in controversy
16 regarding the other purportedly “aggrieved” employees whom Plaintiff seeks to
17 represent. As set forth above, Plaintiff asserts claims on behalf of 1,658 other current and
18 former employees. Moreover, the penalties in controversy for the real party in interest,
19 the State of California, exceed \$75,000 as noted above.

20 **IV. NO JOINDER REQUIRED**

21 49. Unnamed, or Doe defendants are not required to join in removal. *Emrich v.*
22 *Touche Ross & Co.*, 846 F.2d 1190 n.1 (9th Cir. 1988) (Doe defendants need not join in
23 removal).

24
25
26 ¹² Although “only the portion of attorney’s fees attributable to [Plaintiff]’s claims
27 count towards the amount in controversy” on Plaintiff’s PAGA claims, the amount in
28 controversy in this case will be even greater after taking into account Plaintiff’s claim for
attorneys’ fees. *Patel*, 58 F. Supp. 3d at 1049.

1 **V. VENUE**

2 50. Pursuant to 28 U.S.C. § 1441(a), “any civil action brought in a State court of
3 which the district courts of the United States have original jurisdiction, may be removed
4 by the defendant or the defendants, to the district court of the United States for the district
5 and division embracing the place where such action is pending.” Under 28 U.S.C. § 102,
6 this Court embraces the Superior Court of the State of California for the County of Los
7 Angeles. Accordingly, this Court is the appropriate Court to which remove this action.
8 28 U.S.C. § 1441(a).

9 **VI. PRAYER FOR REMOVAL & NOTICE OF REMOVAL TO STATE
10 COURT**

11 51. WHEREFORE, Defendant prays that this civil action be removed from the
12 Superior Court of the State of California, County of Los Angeles, to the United States
13 District Court for the Central District of California.

14 52. This Notice of Removal will be promptly served on Plaintiff and filed with
15 the Clerk of the Superior Court of the State of California in and for the County of Los
16 Angeles.

17 53. In compliance with 28 U.S.C. § 1446(a), true and correct copies of all
18 process, pleadings, and orders served in this action are attached hereto. They are:

19 **Exhibit A:** Notice of Service of Process;

20 **Exhibit B:** the Complaint; the Affidavit of Kendra Sloan; the Summons; the Civil
21 Case Cover Sheet and Addendum; the Notice of Case Assignment; the Alternative
22 Dispute Resolution Information Packet; and related paperwork.; and

23 **Exhibit C:** Defendant’s Answer.

1 DATED: January 2, 2019

Respectfully submitted,

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4
5 SEYFARTH SHAW LLP

6 By: /S/ Eric E. Hill

7 Michael J. Burns
8 Eric E. Hill

9
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